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STATE FOR EUR/WE AND EEB JOHN BYERLY AND WIN DAYTON

E.O. 12958: N/A
TAGS: [EAIR](#) [ECON](#) [PGOV](#) [PREL](#) [EI](#)
SUBJECT: DELIVERY OF DRAFT U.S.-IRELAND PRECLEARANCE AGREEMENT

Ref: (a) Rosenzweig-Nystrom email, 12/14/2007; (b) Dublin 888

1. (SBU) Per Ref A, on December 18, 2007, Post delivered a hard copy of the draft U.S.-Ireland Agreement on Air Transport Preclearance to the Irish Department of Foreign Affairs under cover of a diplomatic note. The texts of the diplomatic note and draft agreement follow.

2. (SBU) Department of Homeland Security and Irish officials plan to hold initial negotiations the week of January 28 in Dublin to discuss the draft agreement.

3. (SBU) The text of the diplomatic note follows.

BEGIN TEXT OF DIPLOMATIC NOTE

No. 788

The Embassy of the United States of America presents its compliments to the Department of Foreign Affairs and has the honor to transmit a proposed agreement on air transport preclearance to facilitate air travel between Ireland and the United States. The proposed agreement expands the existing Agreement Between the United States of America and Ireland on Preinspection, signed at Dublin on June 25, 1986 and supplemented by the agreement effected by an exchange of notes at Washington, March 21, 1988, to extend the preinspection program to full preclearance for eligible flights at the Shannon and Dublin International Airports, where the facilities and other physical conditions will be properly expanded and configured to enable U.S. Customs and Border Protection to carry out its mission, with respect to the examination and inspection of passengers and their possessions, aircraft crew, baggage and aircraft stores, as well as the inspection and control of aircraft seeking entry to the United States. The proposed agreement reflects the mutual commitment by the United States and Ireland to a high standard of service and fair and equitable treatment of air carriers and passengers.

The Embassy of the United States avails itself of the opportunity to renew to the Department of Foreign Affairs the assurances of its highest consideration.

Embassy of the United States of America
Dublin, December 18, 2007

END TEXT OF DIPLOMATIC NOTE

4. (SBU) The complete text of the draft U.S.-Ireland Agreement on Air Transport Preclearance follows.

BEGIN TEXT OF DRAFT AGREEMENT

AGREEMENT ON AIR TRANSPORT PRECLEARANCE

BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF IRELAND

The GOVERNMENT OF THE UNITED STATES OF AMERICA and the GOVERNMENT OF IRELAND, hereinafter "the Parties",
CONSIDERING that Preclearance facilitates air travel between the two countries and is of mutual benefit to both Parties;

CONSIDERING the success and benefits to both Parties of U.S. immigration pre-inspection at Shannon and Dublin International Airports in the Republic of Ireland, which was established pursuant to the Agreement Between the United States of America and Ireland on Preinspection, signed at Dublin June 25, 1986 and supplemented by the agreement effected by an exchange of notes at Washington March 31, 1988;

DESIRING to expand the pre-inspection program to full Preclearance for eligible flights at the Shannon and Dublin International Airports, where the facilities and other physical conditions will be properly expanded and configured to enable U.S. Customs and Border Protection to carry out its mission, with respect to the examination and inspection of passengers and their possessions, aircraft crew, baggage and aircraft stores, as well as the inspection and control of aircraft seeking entry to the United States;

COMMITTED to a high standard of service and fair and equitable treatment of air carriers and passengers;

AGREE as follows:

Article 1
Definitions

For the purposes of this Agreement:

- 1) "Air Industry" means airport authorities and scheduled/charter air carriers and, if applicable, any private aircraft owner/operator.
- 2) "Aircraft commander" means any person serving on an aircraft who is in charge or has command of its operation and navigation.
- 3) "Eligible Flight" means any commercial scheduled/charter flight, to include ferry flights, and any flight by private aircraft, that has requested and been approved for preclearance service through the Inspecting Party. State aircraft will be considered by the Inspecting Party on a case by case basis.
- 4) "Goods" means personal effects, wares of any description, any means of transport (conveyances), animals and plants and their products, currency and other monetary instruments, and any document in any form.
- 5) "Host Party" means the Party from whose territory passengers and goods destined for the territory of the Inspecting Party are precleared.
- 6) "Host Party Official" means any person or government official representing the Host Party in the territory in which Preclearance is conducted, who is authorized by that Government's law to assist in the Preclearance process.
- 7) "Inspecting Party" means the Party responsible for preclearing passengers and goods destined for its territory on the territory of the Host Party.
- 8) "Inspecting Authority" - means any agency of the Inspecting Party responsible for the preclearance of passengers and their goods in the territory of the Host Party. For the United States, the Inspecting Authority is U.S. Customs and Border Protection (CBP).
- 9) "In-Transit Preclearance" means the preclearance of passengers and their goods, as well as aircraft coming from third countries that do not formally enter the Host Party's territory;
- 10) "In-Transit Preclearance Area" means all or part of a preclearance area that is used for in-transit preclearance;
- 11) "Law Enforcement Officer" means for the Government of Ireland,

Irish Peace Officers who are authorized to carry weapons and make arrests, as well as members of the Irish National Police (GARDA); and, for the Government of the United States, any U.S., federal, or state or local law enforcement officer;

12) "Preclearance" means the procedure of conducting in the territory of one Party, examination and inspection required for entry/admission into the territory of the other Party;

13) "Preclearance Area" means the limited and operationally contiguous part of an airport terminal and its grounds designated by the Host Party within which Preclearance Officers exercise specified powers and authorities. In the commercial environment, the area consists of: the queuing area used exclusively for Preclearance purposes clearly demarcated in front of the primary inspection area; Inspecting Party primary and secondary examination areas; the departure lounges for flights bound for the territory of the Inspecting Party; connecting corridors, baggage make-up areas, tarmac areas designated for aircraft which will carry precleared passengers, crew and baggage; aircraft destined for the territory of the Inspecting Party that are to be precleared; processing and/or waiting areas or areas containing kiosks or other equipment associated with expedited/trusted traveler membership programs (such as, for the United States, International Expedited Traveler (IET), NEXUS Air, US PASS), if applicable; and, all designated conveyances for precleared passengers or crew used for the transportation of passengers or crew between sterile areas of terminals or from the terminal to the departing aircraft (e.g., buses). When Travelers cannot board a departing aircraft by means of a connecting corridor or designated conveyance, the Preclearance Area shall also include a clearly demarcated area leading to that aircraft for the period of time during which boarding takes place. With respect to the preclearance of private aircraft, the area consists of: the private aircraft processing facility, to include primary and secondary examination areas and any passenger waiting lounge; tarmac areas designated for private aircraft which will carry precleared passengers, crew and baggage; and any private aircraft that is destined for the U.S. and is waiting to be precleared or has been precleared.

14) "Preclearance Facility" means the physical inspection infrastructure located in the territory of the Host Party, to include all offices within the commercial air and private aircraft facilities, all primary and secondary examination areas, and all administrative areas, as well as any and all equipment required for the processing of passengers and their goods (including, where applicable, in-transit passengers and goods) by the Inspecting Party.

15) "Preclearance Officer" means an officer designated by the Inspecting Party to carry out Preclearance in the Host Party's territory. For the United States, this means officers of CBP.

16) "Private aircraft" means any aircraft engaged in a personal or business flight to the territory of the Inspecting Party which is not carrying passengers and/or cargo for commercial purposes.

17) "Post Clearance" means the clearance of aircraft, crew, passengers and goods in the territory of the Inspecting Party.

18) "Travelers" means any air passengers or crewmembers seeking entry/admission to the territory of the Inspecting Party through the Preclearance Facility.

Article II Preclearance Area and the Laws Applicable

1) The Government of Ireland (hereinafter referred to as the "Host Party"), before designating a Preclearance Area, shall consult with participating air industry representatives in order to seek their recommendations on the precise location of the Preclearance Facilities and, if applicable, any In-Transit Preclearance Areas.

2) Both Parties shall mutually consult and determine the designation and boundaries of the Preclearance Area, including the In-Transit Preclearance Area, if applicable.

3) In view of the fact that the law of the Host Party applies in the

Preclearance and In-Transit Preclearance Areas and that United States (hereinafter referred to as the "Inspecting Party") Preclearance Officers must also administer the Inspecting Party's laws referred to in paragraphs 4 and 7, Preclearance shall be carried out in a manner consistent with the laws of both Parties.

4) The Inspecting Party may apply any of its customs, immigration, agriculture and public health laws and regulations to aircraft, passengers, aircraft crew, baggage, and aircraft stores in the territory of the Host Party which are subject to Preclearance, for the purpose of administering and enforcing these laws, including establishing and enforcing penalties for violations of these laws and regulations.

5) Only persons who are Travelers en route to the Inspecting Party's territory or any person or category of persons designated or authorized by the Host Party in consultation with the Inspecting Party, shall enter a Preclearance Area.

6) Every person who enters a Preclearance Area shall be required to report to a Preclearance Officer without delay, to report goods in his/her possession or goods that form part of their baggage, and to present these goods for inspection as required.

7) The Inspecting Party may conduct Preclearance operations/activities at Preclearance Areas in the airports of the Host Party in order to assure that persons and goods entering the territory of the Inspecting Party conform to its laws, including those concerning customs, immigration, public health, food inspection and plant and animal health.

8) The Inspecting Party shall have the right, in accordance with its laws and regulations, to refuse admission of persons and entry of goods and aircraft destined for its territory.

9) The Inspecting Party shall be authorized to administer its civil fines, assess monetary penalties and enforce its laws pertaining to seizure and forfeitures for violations of the law of the Inspecting Party. In those cases where the Host Party institutes penal proceedings, the Inspecting Party shall forgo pursuit of any applicable fines and penalties with respect to the same act or omission until the close of the Host Party's matter.

10) Goods that are required as evidence of an offense which is proceeding to resolution in a court of the Host Party, as well as those which are required by law to be dealt with in accordance with the Host Party law, shall be retained by the Host Party to be dealt with in accordance with its laws and any applicable international agreements between the Parties. In the event that such goods held as evidence are not forfeited by the Host Party in connection with such judicial proceedings, the Inspecting Party may exercise the option to pursue forfeiture or take custody of the goods for evidentiary purposes under its own laws upon the conclusion of the Host Party's proceedings.

11) Nothing in the Agreement affects the authority of the Inspecting Party to enforce its civil and criminal laws within its own territory.

12) The Parties shall establish mutually acceptable standard operating procedures concerning Preclearance, including protocols for resolution in the event of a positive alarm during radiological/nuclear screening of aircraft, Travelers and/or their goods. The Host Party will secure and dispose of any illicitly trafficked radiological/nuclear materials detected.

13) Nothing in the Agreement affects the rights and obligations of the Parties under other international agreements.

14) Activities under the Agreement are subject to the availability of appropriated funds.

Article III Preclearance Locations

1) The Inspecting Party shall commence Preclearance service at the Shannon and Dublin International Airports on the date of entry into force of this Agreement, provided a suitable Preclearance Facility

for both the commercial air and private air environments is made available at each location that meets U.S. Customs and Border Protection's (CBP) (hereinafter referred to as the "Inspecting Authority") Airport Technical Design Standards and otherwise satisfies the conditions noted below in paragraph 6.

2) In developing or modifying its Preclearance Facility requirements, the Inspecting Authority shall consider the views of the local Air Industry and the local airport authorities.

3) Where modifications to Preclearance Facilities are essential to achieve compliance with the requirements of one or both of the Parties, the requesting Party shall consult with the airport authority and establish a reasonable time frame for implementation of such modifications by the airport authority.

4) In-transit Preclearance procedures shall be considered and may be adopted at an air Preclearance location upon agreement of both Parties.

5) A decision to terminate services at a Preclearance location shall be a joint decision by written agreement of the Parties based upon relevant factors, including national security interests, sustained and substantial decrease in traffic and after consultation with the applicable airport authority and the local Air Industry.

6) The provision of Preclearance services at an airport, including the Shannon and Dublin International Airports identified in paragraph 1 hereof, shall be contingent upon:

a) The availability of funding (consistent with the terms of Article VIII (Cost of Preclearance)) for the construction, operation and maintenance of the Preclearance Facility. The Facility must be mutually acceptable to the Parties and meet the Inspecting Authority's Airport Technical Design Standards, unless the Parties agree that clear reasons exist for modification;

b) The existence of sufficient traffic to make feasible the efficient operation of the Preclearance Facility, taking into account available inspection technologies and procedures;

c) Each airport authority providing a high standard of security in the Preclearance Area as set forth in Annex I (Security Arrangements) for Preclearance Officers

d) Each airport authority taking all appropriate steps to protect the Preclearance Area and Facility and the contents therein, including computer systems, official archives and documents maintained and used by the Inspecting Authority, against any intrusion or damage and to prevent any disturbance of the peace on the premises. Official archives, including electronic files and documents, of the Inspecting Party located in the designated Preclearance Area and Facility shall enjoy the same inviolability as consular archives under the Vienna Convention on Consular Relations;

e) Each airport authority ensuring that it has an airport security program that maintains the sterility of the Preclearance Area and restricts access to the Preclearance Area to authorized personnel only. Non-Travelers will not be permitted access to the Preclearance Area unless and until they have been vetted by the Inspecting Authority to determine their suitability for access to the Preclearance Area. In determining who may have access to the Preclearance Area, the Inspecting Authority shall consult regularly with the airport authority and give full consideration to the views expressed by each Party regarding access to the Preclearance Area. A local consultative mechanism to address security concerns within the Preclearance Area, comprised of representatives from each Party, shall be established at each airport;

f) Each airport authority establishing, implementing and maintaining a plan for coordinating air carrier requests for the preclearance of flights with appropriate personnel of the Inspecting Authority at least 60 days in advance of the requested preclearance operation in accordance with Annex II.

g) The completion of a commercial air and private air Preclearance Facility that meets the Inspecting Authority's Airport Technical

Design Standards.

7) If an airport authority fails to meet these conditions and the Inspecting Party considers that its operations are at risk as a result, the Inspecting Party may request immediate consultations. Failure to reach a satisfactory resolution within 15 days may result in the Inspecting Party suspending the operation under discussion. When justified by an emergency, the Inspecting Party can take interim action prior to the expiry of 15 days.

Article IV

Host Party's Obligations

1) Within a Preclearance Area the Host Party shall permit the Inspecting Party to conduct and perform the following enforcement related functions:

a) Inspections - Preclearance Officers are authorized to:

i) conduct the preclearance of , including searches, of Travelers, their baggage, personal effects and any goods in their possession destined for the territory of the Inspecting Party;

ii) examine aircraft that are destined for the territory of the Inspecting Party, including all goods that are in, or that are to be loaded onto, the aircraft, as well as aircraft stores;

iii) determine the procedures under which the inspections will be carried out to include the utilization of human resources; and

iv) detain, with appropriate assistance of the Host Party, any aircraft destined for the U.S. until the resolution of any suspected violations of Host Party or Inspecting Party law.

b) Detention - Preclearance Officers are authorized to:

i) detain any Traveler seeking entry into the United States while the Preclearance Officers determine the Traveler's admissibility and/or whether or not a violation of U.S. law has occurred. In those instances where it is suspected a violation of Host Party law has occurred, the Traveler and his/her goods will be expeditiously turned over to authorities of the Host Party. Individuals suspected of violating Inspecting Party law will be examined and if necessary, be issued any applicable penalty, fee, or demand for duty or tax and be processed and/or permitted to travel to the territory of the Inspecting Party where appropriate enforcement action may be taken.

ii) detain and search any non-Traveler in the Preclearance Area suspected of violating either Party's law and to turn over violators of Host Party law to Host Party officials.

iii) order anyone found in the Preclearance Area to report to a Preclearance Officer or leave the area. At any stage in the Preclearance process, the Inspecting Party shall permit Travelers to leave the Preclearance Area unless the Traveler is detained for reasons noted above in sub-paragraphs (i) and (ii).

c) Personal Search - Preclearance Officers are authorized to:

i) conduct personal searches in accordance with the Inspecting Authority's Personal Search Policy and Inspecting Party law. Immediate pat downs for weapons (conducted for officer and public safety purposes), pat downs (for goods), and partial body searches (to recover material evidence reasonably suspected to be concealed on the body, including as the result of an immediate pat down or pat down) will be the only types of personal searches authorized to be conducted by Preclearance Officers. Only Host Party Officials shall have the authority to conduct personal searches considered more intrusive than partial body searches, such as: body cavity searches and medical examinations typically involving X-rays and monitored bowel movements.

ii) perform an immediate pat down of a person of the opposite sex only if the

Preclearance Officer suspects on reasonable grounds that the person is carrying an item that would present a danger to human life or

safety. If no Preclearance

Officer of the same sex as that of the Traveler is available to conduct a Pat Down or Partial Body Search, then the Preclearance Officer may authorize any suitable person of the same sex to conduct the search.

iii) make requests of the Host Party to conduct personal searches deemed more intrusive than partial body searches, such as: body cavity searches and medical examinations typically involving x-rays and monitored bowel movements. When performed by Host Party law enforcement officials at the request of the Inspecting Authority, the Inspecting Authority may witness the search. If no Preclearance Officer of the same sex is available, then the Preclearance Officer may authorize any suitable person of the same sex to observe the search.

d) Weapons Carry - Preclearance Officers, acting on reasonable grounds, are authorized to:

i) carry, and when appropriate, use firearms as a means of self-protection or for the protection of anyone in the Preclearance Area from death or grievous bodily harm.

ii) use force as is reasonable necessary to perform their Preclearance duties under the Agreement. Preclearance Officers may use force only when necessary, that is when the Inspecting Party has a reasonable belief that the Traveler or subject of such force poses an imminent danger of death or serious physical injury to a Preclearance Officer or to another person in the Preclearance Area.

e) Collections, Seizure and Forfeiture - Preclearance Officers are authorized to:

i) Examine, detain and seize goods and/or private aircraft, and if applicable, cause their forfeiture to the Inspecting Party in those instances where there is a violation of Inspecting Party law detected and the act does not violate the Host Party's law, or the Host Party elects not to seize and forfeit the goods based upon a violation of its own law;

ii) assess and collect all applicable Inspecting Party duties, taxes, fees, and penalties from Travelers as necessary to protect the revenue of the Inspecting Party and enforce applicable laws of the Inspecting Party;

iii) detain and transfer to Host Party officials all goods for which the possession, import, export, or handling of such goods is prohibited under Host Party laws where (1) there is a violation of the laws of both Parties and the Host Party will pursue action against a violation of its law, or (2) there is no violation of Inspecting Party law detected. In cases where there is a violation of the Host Party's laws as well as Inspecting Party law and the Host Party seizes the goods and holds them as evidence but elects not to institute forfeiture proceedings under its own laws, the Host Party will promptly return the goods to the Inspecting Party following conclusion of its legal and/or administrative proceedings for forfeiture under Inspecting Party law.

f) Security - In both the commercial air and private air environments:

i) When a Traveler on a precleared flight is refused passage onwards because of his/her refusal to comply with applicable laws and procedures, or a determination of inadmissibility to the territory of the Inspecting Party, upon request of a Preclearance Officer, the Host Party shall provide appropriate law enforcement assistance to prevent such person from boarding the aircraft;

ii) The Host Party shall ensure that an armed law enforcement presence is available for assistance to the Inspecting Party's Preclearance Officers in accordance with this Article and Annex I (Security Arrangements); and

iii) The Host Party shall provide law enforcement assistance to the Inspecting Party's Preclearance Officers during the detention, inspection and/or search of any private aircraft and to prevent any unauthorized departure, if requested by the Preclearance Officers.

2) Outside the Preclearance Area, Preclearance Officers may:

a) request that a Traveler or his/her goods be returned by the Host Party to the Preclearance Area to ensure compliance with the requirements of the Inspecting Party; and

b) request that a Host Party law enforcement officer escort any Traveler and their goods to the Preclearance Area if a Traveler refuses to return to the Preclearance Area.

3) The Host Party shall provide training as necessary for Preclearance Officers regarding Host Party law and regulations that pertain to Preclearance in the Host Country.

Article V

Inspecting Party's Obligations and Authorities

1) On the territory of the Host Party, the Inspecting Party shall:

a) provide a high level of service to the traveling public and efficient Preclearance operations;

b) provide a sufficient number of Preclearance Officers, supported by technologies, to carry out with reasonable speed and efficiency, preclearance of aircraft, crew, Travelers and their goods, baggage and aircraft stores on eligible flights of carriers for which preclearance has been approved;

c) give consideration to using flexible practices and operating procedures, which may improve the efficiency of preclearance or address temporary disruptions;

d) use best efforts to secure resources if additional staff and other resources are required to operate Preclearance approved by both Parties;

e) consider requests from the local Air Industry and each airport authority to improve their operational efficiency through flexible procedures that meet the controls and sterility standards established by the Inspecting Party and are consistent with the efficient use of Inspecting Party Preclearance personnel and resources; and

f) give at least 90 days advance notice of reductions of service to the appropriate airport authorities, air industry, and the Host Party.

2) The provisions set forth in Annex II shall be applied in determining the flights for which the Inspecting Party authorizes Preclearance.

3) The Inspecting Party shall have the right:

a) to deny preclearance to flights in any case where authorized under its law;

b) to require post clearance as it deems necessary of any aircraft, Traveler or goods on any flight;

c) to preclear eligible flights only if Travelers can be routed through the designated Preclearance Area;

d) to decline to conduct Preclearance for any air carrier or aircraft until that air carrier or aircraft commander has satisfied the Inspecting Party that it will deny carriage to anyone failing to submit to a Preclearance inspection and to anyone who, having submitted to such inspection, is found ineligible by the Inspecting Party to board a precleared flight;

e) to deny in-transit privileges to any air carrier or aircraft commander, which/who would not otherwise be authorized by the Inspecting Party's civil aviation authorities to fly to the Inspecting Party's territory; and

f) to refuse to preclear any Traveler and his/her goods if the Traveler does not satisfy the Inspecting Party's Preclearance Officer that he/she qualifies for Preclearance or that his/her goods

can be lawfully imported into the Inspecting Party's territory.

4) The Inspecting Party shall:

a) dispose of goods that neither Party, nor the Traveler or non-Traveler retains, in accordance with the procedures mutually established by the Parties;

b) detain and transfer to the Host Party without delay any goods where (1) the possession, import, export, or handling of such goods is in violation of the laws of both Parties and the Host Party has made known explicitly to the Inspecting Party that it will pursue action against the violation, or (2) where the goods are possessed, imported, exported or handled in violation of the Host Party's law and no violation of Inspecting Party law is detected; and

c) make goods that are forfeited to the Inspecting Party during Preclearance subject to appeal procedures in the territory of the Inspecting Party.

5) The Inspecting Party shall not detain a Traveler or any aircraft within the Preclearance Area for more than a reasonable time as is necessary to be processed by Preclearance Officers in accordance with this Agreement or, if further proceedings are required, for an appropriate Host Party official to take custody of the aircraft, Travelers, goods or other evidence. Non-Travelers detained by the Inspecting Party under conditions outlined in Article IV, paragraph 1, shall not be detained for more than a reasonable time as is necessary to determine whether a violation of law has occurred and for appropriate Host Party Officials to take custody of the violators, if necessary.

6) The Inspecting Party shall not be responsible for costs associated with Travelers or non-Travelers obtaining advice from legal counsel.

7) In the Preclearance Area, the Inspecting Party shall ensure that information provided by the Host party, e.g., signage, brochures and/or other communication materials outlining the rights and obligations of Travelers, is readily available and posted for the Travelers to view.

Article VI
In Transit Preclearance

In-Transit Preclearance operations shall, upon agreement by both Parties, be implemented at locations with Preclearance service established pursuant to this Agreement, including the Shannon and Dublin International Airports.

Article VII
Role of Airport Authorities

1) The Host Party shall ensure that the airport authorities for airports at which Preclearance is established pursuant to this Agreement:

a) permit the installation and operation by the Inspecting Party of such communications and other modern inspection aids as are required, including radiological and nuclear detection devices;

b) ensure that each Preclearance Area and, if applicable, each In-Transit Preclearance Area is clearly demarcated;

c) ensure that there will be no public access to the area designated as the "Preclearance Area" by allowing only Travelers destined for the Inspecting Party's territory and authorized personnel to enter this area;

d) post signage and make available information regarding the rights and obligations of travelers in a Preclearance Area;

e) if applicable and approved, provide adequate facilities for the operation of In-Transit Preclearance; and

f) agree to follow designated procedures regarding the advance notification to the Inspecting Party of the identity of any private aircraft requesting preclearance (see Annex II).

Article VIII
Participation of Air Carriers

1) The Inspecting Party shall permit each air carrier and aircraft commander the option to use Preclearance or post clearance for flights, subject to the following conditions:

a) Any air carrier seeking approval of Preclearance services will be required to make such request in writing no later than 60 days before the proposed commencement of service. All requests for Preclearance must be directed to the applicable representative of the Inspecting Authority's Port Director for that Preclearance Facility. For adjustments to air carrier flight schedules in accordance with Annex II (1), the Inspecting Authority shall require 30 days notice of any anticipated schedule changes;

b) Any air carrier desiring to withdraw entirely from Preclearance at any location will be required to provide 90 days advance written notice to both Parties. However, if neither Party objects, the air carrier may withdraw sooner. The Inspecting Party may require reasonable notice be provided to withdraw from Preclearance only in respect to one or more eligible routes; and

c) Aircraft commanders will be required to comply with laws governing their landing, entry and clearance in the Inspecting Party's territory. The Host Party will endeavor to ensure that all aircraft commanders seeking preclearance provide advance notice of their departure from the territory of the Host Party to the territory of this Inspecting Party in order to schedule Preclearance services (see Annex II).

2) Where In-transit Preclearance is introduced in accordance with the terms of this Agreement, the Host Party shall ensure that each airport with In-Transit Preclearance makes available the in-transit process to all carriers and aircraft commanders that have agreed to participate in the in-transit program.

3) Cargo services (i.e., preclearance of cargo) shall not be eligible for Preclearance services under this Agreement.

Article IX
Cost of Preclearance

The cost of Preclearance shall be borne as follows:

(a) The Inspecting Party, pursuant to its laws and regulations governing Preclearance/preinspection, shall be responsible for its personnel and operations costs (other than facility costs) of conducting Preclearance activities, and may charge appropriate inspection user fees;

(b) In accordance with Article V (3)(d) of this Agreement, for any Traveler refused passage onward by the Inspecting Party based upon the authority of the Inspecting Party, the air carrier or the aircraft commander concerned shall be responsible for any costs, including, where necessary, accommodation and maintenance costs arising from the removal to that individual's point of embarkation, or to the country of which he/she is a national;

(c) The provision of the necessary Preclearance Facilities shall be the responsibility of the competent airport authority, but such costs may be recouped from the air carriers using Preclearance services; and

(d) The cost of Preclearance services under subparagraphs (a) and (c), above, shall be allocated in the manner set forth in the Inspecting Party's Airport Technical Design Standards document.

Article X
Privileges and Immunities

11. Preclearance Officers shall not be amenable to the jurisdiction of the Host Party in respect of acts performed or omitted to be performed by them in the course of their official duties under this Agreement.

12. The Host Party may request the removal of a Preclearance Officer

who abuses his/her official position.

13. Preclearance Officers and accompanying family dependants except those who are citizens or permanent residents of the host country, shall be granted tax-free and duty-free benefits with respect to the payment of excise duties and taxes, and customs duties on goods for personal consumption, in reasonable quantities brought into the Host Party territory.

Article XI Consultations

1) Local airport mechanisms shall be used to address issues pertinent to a particular Preclearance location. Issues which cannot be resolved at the local level, shall be referred to the U.S./Ireland Preclearance Consultative Group.

2) The Parties shall establish a U.S./Ireland Preclearance Consultative Group consisting of representatives of each Party. The U.S./Ireland Preclearance Consultative Group shall meet on a regular basis, at least annually, to review any issues related to this Agreement.

a) Other interested groups, including the Air Industry, may attend portions of the U.S./Ireland Preclearance Consultative Group meetings, as mutually determined by the Parties.

b) The U.S./Ireland Preclearance Consultative Group shall commence consultations within 30 days of the receipt of the request by either Party, to convene the Consultative Group unless otherwise agreed between the members.

c) Where the U.S./Ireland Preclearance Consultative Group fails to resolve a matter within 30 days from commencement of the consultations, unless otherwise agreed between the Parties, the affected Party may request a meeting of the Parties.

3) At any time, either Party may request consultations regarding any portion of this Agreement. Such requests may include, but are not limited to, changes in domestic law or any other matter a Party considers may affect the interpretation, application, or implementation of this Agreement.

a) On matters which the requesting Party states are urgent, such consultations between the Parties shall commence within 15 days of the date of the request, or in accordance with Article III, paragraph 8, or as otherwise agreed to between the Parties.

b) Consultations on other issues shall commence within 30 days of the request, unless otherwise agreed to between the Parties.

4) The Parties agree that if a court or tribunal of either nation should determine that any Preclearance activity or operation is contrary to the laws of either party, the Parties should consult on how to proceed.

5) As appropriate, either Party may engage the services of an independent contractor to conduct surveys regarding the Preclearance process. The results of these surveys shall be provided to both Parties. Either Party, with the concurrence of the other Party, may also conduct their own surveys regarding the Preclearance process.

Article XII Annexes

The Annexes constitute an integral part of this Agreement.

Article XIII Reciprocity

Should the Government of Ireland seek to establish Preclearance service at airports in the United States of America, the Government of the United States shall consult with relevant authorities at U.S. airport(s) which are mutually identified by the Parties, to determine the feasibility and details of establishing reciprocal Preclearance service under the terms of this Agreement. Reciprocal preclearance rights may be agreed to by the Parties in an amendment of this Agreement.

Article XIV
Entry into Force

1) This Agreement shall enter into force on the date of the later note in an exchange of diplomatic notes in which each Party informs the other that it considers the requirements of Article III, paragraph 6 to have been met with respect to Preclearance service at Shannon and Dublin International Airports and that it has completed its necessary internal procedures for entry into force of the Agreement.

2) This Agreement and its Annexes maybe amended by written agreement of the Parties. Upon entry into force, this Agreement shall supersede the Agreement between the United States of America and Ireland on Preinspection, signed at Dublin June 25, 1986, as supplemented by the agreement of March 31, 1988.

3) This Agreement shall continue in force unless terminated by either Party giving one year's written notice to the other Party.
DONE in two originals at () this () day of (), 2008.

() FOR THE GOVERNMENT OF THE UNITED STATES
OF AMERICA
() FOR THE GOVERNMENT OF IRELAND

Annex I
Security Arrangements

1) Both Parties agree that at any Preclearance site it is essential, for the security of Preclearance Officers and the Preclearance operation in general, to have a high standard of security in the Preclearance Area including the presence of armed Host Party law enforcement officers during the hours of operation. In the case of Preclearance Facilities located on Ireland's territory, the following provisions shall apply:

a) With regard to commercial aircraft:

i) Ireland shall ensure a high standard of security for U.S. Preclearance Officers. During peak hours of operation (to be determined locally at each airport) a continuous armed Irish law enforcement presence will be provided within the Preclearance Area; and

ii) During non-peak hours of operation (to be determined locally at each airport) the following standard will apply: armed Irish law enforcement patrols will appear in the Preclearance Area every 15-30 minutes; when not on-site during non-peak hours, armed Irish law enforcement response times of less than 3 minutes to emergency calls from the U.S. Preclearance Area will be required. Disputes regarding what constitutes an emergency will be resolved between the Preclearance Port Director (CBP), the airport authority and the locally responding Irish law enforcement agency. If no agreement can be reached, consultations shall be held between the Parties.

b) With regard to private aircraft:

i) The Government of Ireland shall ensure a continuous armed law enforcement presence in the Preclearance area/facility during all hours of operation.

Annex II
Coordination of Preclearance Services

a) Consistent with Article VIII and/or, if applicable, Article X, for Preclearance purposes, airport authorities and commercial air carriers will be required to notify the Inspecting Party of any proposed seasonal schedules and new flights, no less than 60 days in advance of their implementation. For subsequent limited adjustments to seasonal schedules, Article VIII, paragraph 1(a) shall apply. The Inspecting Party and Host Party will develop procedures to ensure adequate advance notice of arrival to the Inspecting Party for the preclearance of private aircraft.

b) The Inspecting Party shall endeavor to accommodate all requests for Preclearance service when such requests are made in the timeframes specified in paragraph (a) above and shall work with

airport authorities and commercial air carriers to accommodate new flights and changes in flight schedules. The Inspecting Party will endeavor to accommodate requests for Preclearance service made by private air owners/operators in accordance with the joint procedures that are developed by the Inspecting Party and Host Party (as referenced in paragraph a).

c) Consistent with Article XI, any request for Preclearance service, not resolved at the local level shall be referred to the U.S./Ireland Preclearance Consultative Group.

d) The Inspecting Party, in its sole discretion, shall have the right to determine on a case-by-case basis whether to provide Preclearance service to any irregular or ad hoc flights during mutually agreed upon normal hours of operation when there has been insufficient coordination with the Inspecting Party.

e) The Inspecting Party shall have the right to determine on a case-by-case basis whether to provide Preclearance service to flights outside mutually agreed upon normal hours of operation.

END TEXT OF DRAFT AGREEMENT

FAUCHER